

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.2151 OF 2006

H.Vassanji & Company Petitioner

Versus

Shri A.N.Dhanapure, Judge & Ors. ..Respondents

Mr.Zubin Kamdin i/b D.H.Shah for petitioner

Mr.Vivek Kantawala i/b M/s.Vivek Kantawala & Co. for
respondent no.2

CORAM : P.V.KAKADE, J.

DATE : 29th MARCH 2006

P.C.:

1. Heard both sides. Perused the record.

2. The petitioner-defendant in pending trial has preferred this petition against the order dated 6th March 2006 passed by the trial judge considering the rejection of request for further time to cross-examine the plaintiff's witness on three documents, which were produced on record.

3. The record shows that in the course of the cross examination of PW-1 three documents were allowed to be produced viz. (1) Letter of Administration (2) Circular and (3) Terms of Tenancy printed on the back side of the blank rent receipts. The learned trial judge after hearing both the parties was of the view that the copy of letter of administration was given long back to the tenants whereas the circular was also addressed to the defendant no.1 and in respect of the terms of the tenancy, they are printed on each rent receipts on back side of the each rent receipts. Under the circumstances, and particularly when defendants had called upon to produce those documents in cross examination, the question of granting any further time as prayed does not warranted and request is rejected. Hence the present petition.

4. At the out set, without further elaboration I must note that mere knowledge of existence of the document, and the fact that those were called for by the defendants in the course of the cross examination of the plaintiff's witness, does not mean that instructions are not required on the documents from the trial. Therefore,

I must note that the lower court has definitely erred in making haste to reject the request and closing the evidence of P.W.-1 and directing the defendant to file affidavit of evidence.

5. No doubt, as pointed out by the learned counsel for the respondent, that the conduct of the petitioner is to prolong the litigation, as is reflected from the various documents by way of application to the trial court, which may not to misrepresenting the trial court, however, those besides the issue involved in the petition.

6. Hence, rule is made absolute. The order passed by the trial judge in rejecting the permission to seek instructions before cross examining P.W.-1 in the suit is set aside. The trial court is directed to reopen the evidence of P.W.-1 only for the purpose of examination on behalf of the defendant-petitioner of P.W.-1 on the basis of the said three documents and thereafter proceed with the evidence of the defendant. With this direction the petition stands disposed off. On 3.4.2006, which is I am told the date fixed in the proceeding for cross examination. The petitioner shall cross examine on that

date and then proceed according to direction of the court. The petition is stands disposed of with no order as to costs.